IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7804 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT DISTRICT COOPERATIVE BANK LTD

Versus

BR KATARA

Appearance:

1. Special Civil Application No. 7804 of 1998

MR TUSHAR MEHTA for Petitioner No. 1

MS MANISHA LAVKUMAR AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/12/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order dated 02/09/1998, at Annexure-A to the petition, whereby the State Government had allowed the Revision Application which was initiated suo-motu and had set aside the order dated 30/09/1997 passed by the District Registrar

deleting bye-law no.15(4)(5).

2. The petitioner Bank is a Co-operative Society registered under the provisions of the Gujarat Co-operative Societies Act. As the petitioner Bank was desirous of amending its bye-laws, it sent the Amendment duly passed in its Annual General Meeting to the District Registrar. The District Registrar after verifying the Amendments sought, with the provisions of the Act, approved the bye-laws and registered the same vide order dated 30/09/1997.

3. As elections were required to be held for the posts of Directors, on the retirement of 1/3rd of the Directors every year, proposals were sent to the District Collector to take steps for holding the said elections. Respondent no.1 herein, in exercise of the suo motu powers under Section 155 of the Act, issued show cause notice dated 09/06/1998 to the petitioner Bank. The petitioner Bank made repeated requests to respondent no.1 to supply the materials which were relied upon by it for the purpose of issuing the said notice. But no heed was paid to the requests of the petitioner Bank.

4. Pursuant to the above, respondent no.1 herein, sent a copy of the Notice dated 09/06/1998 to one Rajkot Jilla Madhyasth Grahak Sahkari Bhandar Ltd. (for short, "the Bhandar"). The Bhandar preferred suit being Arbitration Suit No.354 of 1998 before the Board of Nominees, Rajkot on the basis of the said Notice and the elections were stayed. The petitioner Bank made an application before respondent no.1 herein, pointing out that the Bhandar had received the notice and that it was the ground for the issuance of the said Notice to it and the contention that the powers were being exercised suo motu were totally baseless.

5. Thereafter, the impugned order dated 02/09/1998 was passed against the petitioner Bank. Feeling aggrieved by the said order the petitioner Bank has preferred this petition before this Court.

6. Mr.Tushar Mehta learned advocate for the petitioner Bank has contended that the very purpose of the Amendment of the bye-laws was to ensure that the defunct Society which had no interest whatsoever in the welfare of the Society was restrained from participating in the functioning / election of the Society.

7. I have heard learned counsel for the parties and perused the relevant documents on record. The issue is

squarely covered by a decision of this Court in the case of Valsad District Central Co-operative Bank Ltd. v. State of Gujarat reported in 2003 (2) G.L.H., p.459. The observations made in para 31 are relevant for our purpose;

"31. Keeping in view the aforesaid interpretation of S.27 read with S.28 of the Act, if the matter is examined for the purpose of interpreting by-law No.29(1), it appears that the intention behind the insertion of the bye-law No.29(1) is to give representation in the management of the society to those persons, who are representatives of such societies, who have taken loan or have any loan outstanding or have made investment of Rs.50,000/- or more in the Bank. The second intention appears to be to keep those member societies away from the management, who are either not active or have not transacted the business of taking loan with the Bank or not made any investment with the Bank of an amount of Rs.50,000/- or more. Of such type of bye-laws are not there in the society, the consequence would be that those members who are not active or have neither made any investment, nor have taken any loan, would exercise the voting rights only at the election. Therefore, status of such cooperative societies, who have not transacted any loan business or have not made any investment would be simpliciter as that of voters and they would continue to be the vote banks for the persons who are aspirant to become office bearers in such societies. it is a hard reality and perhaps it would not be out of place to take judicial notice of the things happening in such cooperative societies, which are treated as root level power points that whatsoever, any particular group or body, comes to power, realizes that certain class of certain voters are not going to support at the ensuing election then such group or body in power with a view of see that the genuinely interested class is put into minority, new societies which are rather in the nature of dummy cooperative societies or which are not in any manner interested in the management of the Bank are admitted as members and as a result thereof the number of voters of such type societies would be more in comparison to the societies, which are genuinely interested in the management of the Bank and as a consequence thereof, the atmosphere of majority

is being created. Therefore, in my view the enabling power with the Bank should be read to amend the bye-laws for providing additional criteria or exercising the voting rights with a view to activate the member cooperative societies dummy or nonactivate the members away from elections and power position in the Bank. Therefore, it is not true that such powers for amendment in the bye-laws are not available with the general body of the society or that such amendment in the bye-laws runs counter to the provisions of the Ss.27 or 28 of the Act. Therefore, I cannot agree with the contention raised by Mr.R M Raval appearing for the member cooperative societies that amendment of such bye-laws is against the basic cooperative principles. As such, such amendment in the bye-laws would encourage and activate the nonactive member and keep away dummy and defunct members from the election and, therefore, it would rather subserve the real interest and purpose of cooperative societies and it cannot be said to be frustrating or against the basic cooperative principles. As such, such type of amendment in the bye-laws is with a legitimate purpose for activating the members in the management of the society and to keep defunct, dummy and nonactive members away from the elections and power positions in the society. However, such bye-law should provide reasonable and equal opportunity to all members to get themselves activated in the management or business of society and power to make such amendment cannot be exercised arbitrarily or with absurdity or with ulterior or oblique motive. Therefore, the bye-law No.29(1) is not in conflict with the provisions of Ss.27 or 28 of the Act and in view of the interpretation of bye-law No.29(1) as stated hereinafter, it cannot be said to be operating unreasonably and, therefore, it cannot be said that the Registrar has no authority to grant the sanction to the amendment in the bye-laws."

8. In above view of the matter, the order of the State Government dated 02/09/1998 rejecting the bye-laws and cancelling the order dated 30/09/1997 passed by the District Registrar is quashed and set aside. The order of the District Registrar dated 30/09/1997 is restored back to the original position and bye-law no.15(4)(5) is approved. Rule is made absolute to the above extent.

(K. S. Jhaveri, J.)

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